



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2007-28043]

Hours of Service of Drivers; Renewal and Expansion of American Pyrotechnics Association Exemption from the 14-Hour Rule during Independence Day Celebrations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; granting of application for exemption.

SUMMARY: FMCSA announces the granting of an exemption for 51 member-companies of the American Pyrotechnics Association (APA) from FMCSA's regulation prohibiting drivers of commercial motor vehicles (CMVs) from driving after the 14th hour after coming on duty. FMCSA renews the exemption for 46 APA member companies and grants 5 additional carriers coverage under the exemption, which is effective from June 28 - July 8, 2015, and June 28 - July 8, 2016, inclusive. The original application covered 55 carriers, but FMCSA has declined to exempt 3 of them, and 1 carrier is out of business, leaving 51 approved carriers. Drivers who operate these CMVs in conjunction with staging fireworks shows celebrating Independence Day will be allowed to exclude off-duty and sleeper-berth time of any length from the calculation of the 14-hour driving window otherwise applicable. These drivers remain subject to the 60- and 70-hour limits; they may also drive no more than 11 hours in the 14-hour period after coming on duty, as extended by any off-duty or sleeper-berth time in accordance with this exception. FMCSA believes that the terms and conditions of the exemption will

likely enable APA member motor carriers to maintain a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation.

DATES: This exemption is effective from June 28, 2015 (12:01 a.m.) through July 8, 2015 (11:59 p.m.) and from June 28, 2016 (12:01 a.m.) through July 8, 2016 (11:59 p.m.).

FOR FURTHER INFORMATION CONTACT: Mrs. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-4325, Email: MCPSD@dot.gov, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001.

Docket: For access to the docket to read background documents or comments submitted to the notice requesting public comments on the exemption application, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line Federal document management system is available 24 hours each day, 365 days each year. The docket number is listed at the beginning of this notice.

SUPPLEMENTARY INFORMATION:

APA Application for Exemption

The hours-of-service (HOS) rule in 49 CFR 395.3(a)(2) prohibits a property-carrying CMV driver from driving a CMV after the 14th hour after coming on duty following 10 consecutive hours off duty. Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption from the HOS requirements in 49 CFR 395.3(a)(2) for a 2-year

period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The procedures for requesting an exemption (including renewals) are prescribed in 49 CFR part 381.

The APA, a trade association representing the domestic fireworks industry, applied for an exemption in 2004. A copy of that application is in the docket; it describes fully the nature of the pyrotechnic operations during a typical Independence Day period. Various APA members have held 2-year exemptions during Independence Day periods from 2005 through 2014. The last exemption, for 55 of its members, expired on July 9, 2014. The renewal application covered 50 members that previously held exemptions and 5 additional member companies, but FMCSA has decided not to exempt 3 of them; and 1 carrier, Hi-Tech FX, LLC (US DOT number 1549055), is out of business; 51 carriers are being granted the exemption. A copy of the renewal request is included in the docket referenced at the beginning of this notice.

The CMV drivers employed by APA members are trained pyro technicians who hold commercial driver's licenses (CDLs) with hazardous materials (HM) endorsements. They transport fireworks and related equipment by CMVs on a demanding schedule during a brief Independence Day period, often to remote locations. After they arrive, the drivers are responsible for set-up and staging of the fireworks shows.

The APA stated that it was seeking an HOS exemption for the 2015 and 2016 Independence Day periods because compliance with the current 14-hour rule in 49 CFR 395.3(a)(2) by its members would impose a substantial economic hardship on numerous cities, towns and municipalities, as well as its member-companies. To meet the demand

for fireworks shows under the current HOS rules, APA claimed that its members would be required to hire a second driver for most trips. The result would be a substantial increase in the cost of the fireworks shows – beyond the means of many of its members’ customers – and many Americans would therefore be denied this important component of the Independence Day celebration. The 51 APA members within the scope of this exemption are listed in an appendix to this notice.

Method to Ensure an Equivalent or Greater Level of Safety

The APA believes that renewal of the exemption for previously exempt carriers and the granting of relief for new carriers will not adversely affect the safety of the fireworks transportation provided by these motor carriers. According to APA, its member-companies have operated under this exemption for 10 previous Independence Day periods without a reported motor carrier safety incident. Moreover, it asserts, without the extra duty-period time provided by the exemption, safety would decline because APA drivers would be unable to return to their home base or other safe location after each show. They would be forced to park the CMVs carrying HM 1.1G, 1.3G and 1.4G products in areas less secure than the motor carrier’s home base. As a condition of the exemption, each motor carrier is required to notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5) involving the operation of any CMVs while under this exemption. To date, FMCSA has received no accident notifications, nor is the Agency aware of any accidents reportable under terms of the prior APA exemptions.

APA asserted that the operational demands of this unique industry minimize the risk of CMV crashes. In the last few days before the 4th of July, these drivers transport fireworks over relatively short routes from distribution points to the site of the fireworks

display, and normally do so in the early morning when traffic is light. At the site, they spend considerable time installing, wiring, and safety-checking the fireworks displays, followed by several hours off duty in the late afternoon and early evening prior to the event. During this time, the drivers are able to rest and nap, thereby reducing or eliminating the fatigue accumulated during the day. Before beginning another duty day, these drivers must take 10 consecutive hours off duty, the same as other CMV drivers. FMCSA believes that APA operations conducted under the terms and conditions of this limited exemption will likely provide a level of safety that is equivalent to the level of safety achieved without the exemption.

Public Comments

On April 7, 2015, FMCSA published notice of this renewal application, and asked for public comment (80 FR 186690). No comments were submitted.

FMCSA Decision

The FMCSA has evaluated APA's application and the safety records of the companies to which the exemption would apply. The Agency believes that APA members will likely achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption [49 CFR 381.305(a)], and grants the requested exemption to the 51 APA member-companies listed in the appendix.

FMCSA denies the exemption applications of Garden State Fireworks, Inc. (USDOT number 435878); Pyro Engineering Inc. (USDOT number 530262); and Pyro Shows, Inc. (USDOT number 456818). The denial is based on their insufficient safety management controls and the Agency's analysis of their roadside inspections during the

last 24 months. Under these circumstances, FMCSA believes it would be inappropriate at this time to grant an exemption to these three companies.

Terms and Conditions of the Exemption

Period of the Exemption

The exemption from the requirements of 49 CFR 395.3(a)(2) is effective from June 28, 2015 (12:01 a.m.) through July 8, 2015 (11:59 p.m.) and from June 28, 2016 (12:01 a.m.) through July 8, 2016 (11:59 p.m.). The exemption will expire on July 8, 2016, at 11:59 p.m. local time.

Extent of the Exemption

This exemption is restricted to the 51 motor carriers listed in the appendix and their CMV drivers. The drivers are exempt from 49 CFR 395.3(a)(2), which prohibits a driver from driving a CMV after the 14th hour after coming on duty and does not permit off-duty periods to extend the 14-hour limit. Drivers covered by this exemption may exclude off-duty and sleeper-berth time of any length from the calculation of the 14-hour limit. However, driving time is limited to 11 hours in the 14-hour period after coming on duty, as extended by any off-duty or sleeper-berth time in accordance with this exemption. The exemption is further contingent on each driver having a minimum of 10 consecutive hours off duty prior to beginning a new duty period. The carriers and drivers must comply with all other applicable requirements of the Federal Motor Carrier Safety Regulations (49 CFR parts 350-399) and Hazardous Materials Regulations (49 CFR parts 105-180).

Other Conditions

Each carrier must maintain USDOT registration, a Hazardous Materials Safety Permit (if required), minimum levels of public liability insurance, and not be subject to any “imminent hazard” or other out-of-service (OOS) order issued by FMCSA. Each driver covered by the exemption must be in possession of the exemption document, maintain a valid CDL with required endorsements, not be subject to any OOS order or suspension of driving privileges, and meet all physical qualifications required by 49 CFR part 391.

Preemption

During the periods the exemption is in effect, no State may enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a person or entity operating under the exemption (49 U.S.C. 31315(d)).

FMCSA Accident Notification

Exempt motor carriers must notify FMCSA within 5 business days of any accidents (as defined by 49 CFR 390.5) involving the operation of any of its CMVs while under this exemption. The notification must include the following information:

- a. Identifier of the Exemption: “APA”
- b. Name of operating carrier and USDOT number,
- c. Date of the accident,
- d. City or town, and State, in which the accident occurred, or closest to the accident scene,
- e. Driver’s name and license number,
- f. If any, co-driver’s name and license number
- g. Vehicle number and state license number,

- h. Number of individuals suffering physical injury,
- i. Number of fatalities,
- j. The police-reported cause of the accident,
- k. Whether the driver was cited for violation of any traffic laws, motor carrier safety regulations, and
- l. The total driving time and total on-duty time prior to the accident.

Termination

The FMCSA does not believe the motor carriers and drivers covered by this exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. The FMCSA will immediately revoke the exemption for failure to comply with its terms and conditions.

Issued on: June 23, 2015

T.F. Scott Darling, III
Chief Counsel

Appendix to Notice of Application for Renewal of American Pyrotechnics Association (APA) Exemption from the 14-Hour HOS Rule during 2015 and 2016 Independence Day Celebrations for 46 Motor Carriers

	Motor carrier	Street address	City, state, zip code	DOT No
1	American Fireworks Company	7041 Darrow Road	Hudson, OH 44236	103972
2	American Fireworks Display, LLC	P.O. Box 980	Oxford, NY 13830	2115608
3	AM Pyrotechnics, LLC	2429 East 535th Rd.	Buffalo, MO 65622	1034961
4	Atlas PyroVision Entertainment Group, Inc.	136 Old Sharon Rd.	Jaffrey, NH 03452	789777
5	Central States Fireworks, Inc.	18034 Kincaid Street	Athens, IL 62613	1022659
6	Colonial Fireworks Company	5225 Telegraph Road	Toledo, OH 43612	177274
7	East Coast Pyrotechnics, Inc.	4652 Catawba River Rd.	Catawba, SC 29704	545033
8	Entertainment Fireworks, Inc.	13313 Reeder Road SW	Tenino, WA 98589	680942
9	Falcon Fireworks	3411 Courthouse Road	Guyton, GA 31312	1037954
10	Fireworks & Stage FX America	12650 Hwy 67S, Suite B	Lakeside, CA 92040	908304
11	Fireworks by Grucci, Inc.	20 Pinehurst Drive	Bellport, NY 11713	324490
12	J&J Computing dba Fireworks Extravaganza	174 Route 17 North	Rochelle Park, NJ 07662	2064141
13	Fireworks West Internationale	910 North 3200 West	Logan, UT 84321	245423
14	Gateway Fireworks Displays	PO Box 39327	St Louis, MO 63139	1325301
15	Great Lakes Fireworks	24805 Marine	Eastpointe, MI 48021	1011216
16	Hamburg Fireworks Display, Inc.	2240 Horns Mill Road SE	Lancaster, OH	395079
17	Hawaii Explosives & Pyrotechnics, Inc.	17-7850 N. Kulani Road	Mountain View, HI 96771	1375918
18	Hollywood Pyrotechnics, Inc.	1567 Antler Point	Eagan, MN 55122	1061068
19	Homeland Fireworks, Inc.	P.O. Box 7	Jamieson, OR 97909	1377525
20	Island Fireworks Co., Inc.	N1597 County Rd VV	Hager City, WI 54014	414583
21	J&M Displays, Inc.	18064 170th Ave	Yarmouth, IA 52660	377461
22	Lantis Fireworks, Inc.	130 Sodrac Dr., Box 229	N. Sioux City, SD 57049	534052
23	Legion Fireworks Co., Inc.	10 Legion Lane	Wappingers Falls, NY 12590	554391
24	Miand Inc. dba Planet Productions (Mad Bomber)	PO Box 294, 3999 Hupp Road R31	Kingsbury, IN 46345	777176
25	Martin & Ware Inc. dba Pyro City Maine & Central Maine Pyrotechnics	P.P. Box 322	Hallowell, ME 04347	734974
26	Melrose Pyrotechnics, Inc.	1 Kingsbury Industrial Park	Kingsbury, IN 46345	434586
27	Precocious Pyrotechnics, Inc.	4420-278th Ave NW	Belgrade, MN 56312	435931
28	Pyro Spectacuars, Inc.	3196 N Locust Ave	Rialto, CA 92376	029329
29	Pyro Spectaculars North, Inc.	5301 Lang Avenue	McClellan, CA 95652	1671438
30	Pyrotechnic Display, Inc.	8450 W. St. Francis Rd.	Frankfort, IL 60423	1929883
31	Pyrotecnico (S. Vitale Pyrotechnic Industries, Inc.)	302 Wilson Rd.	New Castle, PA 16105	526749
32	Pyrotecnico, LLC	60 West Ct	Mandeville, LA 70471	548303
33	Pyrotecnico FX	6965 Speedway Blvd, Suite 115	Las Vegas, NV 89115	1610728
34	Rainbow Fireworks, Inc.	76 Plum Ave.	Inman, KS 67546	1139643
35	RES Specialty Pyrotechnics	21595 286th St	Belle Plaine, MN 56011	523981
36	Rozzi's Famous Fireworks, Inc.	11605 North Lebanon Rd	Loveland, OH 45140	0483686
37	Skyworks, Ltd.	13513 W. Carrier Rd.	Carrier, OK 73727	1421047
38	Spielbauer Fireworks Co, Inc.	220 Roselawn Blvd	Green Bay, WI 54301	046479
39	Starfire Corporation	682 Cole Road	Carrolltown, PA 15722	554645
40	Vermont Fireworks Co., Inc./ Northstar Fireworks Co., Inc.	2235 Vermont Route 14 South	East Montpelier, VT 05651	310632
41	Western Display Fireworks, Ltd.	10946 S. New Era Rd.	Canby, OR 97013	498941
42	Western Enterprises, Inc.	PO Box 160	Carrier, OK 73727	203517
43	Western Fireworks, Inc.	14592 Ottaway Road NE	Aurora, OR 97002	838585

44	Wolverine Fireworks Display, Inc	205 W Seidlers	Kawkawlin, MI	376857
45	Young Explosives Corp.	P.O. Box 18653	Rochester, NY 14618	450304
46	Zambelli Fireworks MFG, Co., Inc.	PO Box 1463	New Castle, PA 16103	033167

Appendix to Renewal of Exemption for 5 Motor Carriers Not Previously Exempted

	Motor carrier	Street address	City, state, zip code	DOT No.
1	Pyro Shows of Texas, Inc.	6601 9 Mile Azle Rd.	Fort Worth, TX 76135	2432196
2	Sorgi American Fireworks Michigan, LLC	935 Wales Ridge Rd.	Wales, MI 48027	2475727
3	Spirit of 76	6401 West Hwy 40	Columbia, MO 65202	2138948
4	USA Halloween Planet Inc. dba USA Fireworks	7800 Record Street, Suite A	Indianapolis, IN 46226	725457
5	Arthur Rozzi Pyrotechnics	6607 Red Hawk Ct.	Maineville, OH 45039	2008107

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